

**VOLUNTARY CLEANUP CONTRACT  
06-5671-NRP**

**IN THE MATTER OF  
CONSOLIDATED SYSTEMS, INC, RICHLAND COUNTY  
and  
CONSYS (SC) QRS 16-66, INC.**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and CONSYS (SC) QRS 16-66, Inc., pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002 and Supp. 2005), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200 (2002), with respect to a certain portion of the property located at 650 Rosewood Drive, Columbia, South Carolina and identified on Richland County Tax Maps R11201-02-14, R11100-01-01, R08813-02-02, R11201-02-17, R11201-02-18, R08716-01-02, and R11100-01-03 (hereinafter referred to as the "Consolidated Systems Property"). A legal description of the Consolidated Systems Property is attached as Appendix B. The property that is the subject of this Voluntary Cleanup Contract is that portion of the Consolidated Systems Property where the City of Columbia previously operated a municipal waste landfill (the "Landfill Property"). A legal description of the Landfill Property, which includes approximately 28.527 acres, is attached as Appendix C. In entering this Contract, the Department relies on the representations of the "Information and Certification" submitted March 31, 2006 and revised August 14, 2006 by CONSYS SC QRS 16-66, INC. of Delaware, which is incorporated into this Contract and attached as Appendix A.

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, including any amendments, or in the regulations promulgated thereunder.

A. "CONSYS SC" shall mean CONSYS SC QRS 16-66, INC. of

Delaware.

- B. "Bona Fide Prospective Purchaser" shall have the same meaning as that in CERCLA, 42 U.S.C §§ 9601 (40).
- C. "Consolidated Systems Property" shall mean the property located at 650 Rosewood Drive, Columbia, South Carolina and identified on Richland County Tax Maps R11201-02-14, R11100-01-01, R08813-02-02, R11201-02-17, R11201-02-18, R08716-01-02, and R11100-01-03 and described in the legal property description attached to and incorporated into this Contract as Appendix B that is subject to ownership, prospective ownership, or possessory or contractual interest of CONSYS SC.
- D. "Contract" shall mean this Voluntary Cleanup Contract.
- E. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants (as defined herein), present or existing on, beneath, or emanating from the Landfill Property as of the execution date of this Contract.
- G. "Hazardous Substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act

[33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

- H. "Landfill Property" shall mean that portion of the Consolidated Systems Property as described in the legal property description attached to and incorporated into this Contract as Appendix C and that is subject to ownership, prospective ownership, or possessory or contractual interest of CONSYS SC.
- I. "Non-Responsible Party" (or "NRP") shall mean any party which is neither:
  - a. A responsible party at the time the voluntary cleanup contract is signed, including lenders, economic development agencies, fiduciaries, trustees, executors, administrators, custodians, subsequent holders of a security interest; nor
  - b. A parent, subsidiary of, or successor to a responsible party.
- J. "Oversight Costs" shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto.
- K. "Pollutant or Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which

after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; “contaminant” does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.

- L. “Response Action” shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- M. “Responsible Party” shall mean:
  - a. The owner and operator of a vessel, as defined in CERCLA Section 101 (28), or a facility;
  - b. Any person who, at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of;
  - c. Any person who, by contract, settlement, or otherwise, arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by such a party or entity and containing such hazardous substances; and/or
  - d. Any person who accepts or accepted any hazardous

substances for transport to disposal or treatment facilities, incineration vessels, as defined in CERCLA Section 101 (38), or sites selected by such person from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

- N. "The Site" shall mean the Consolidated Systems Property and all areas where a contaminant has been released, deposited, stored, disposed of, placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA Section 101 (28).
- O. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002 and Supp. 2005).
- P. "Work Plan" shall mean the plan for additional response actions to be conducted at the Landfill Property as described in Paragraph 5 of this Contract.

2. Based on the information known by and/or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. Aerial photographs indicate that the Consolidated Systems Property was primarily agricultural until approximately 1955. By 1955, the Atlantic Coast Line Railroad developed the Columbia Industrial District to the north-northeast of the Consolidated Systems Property. Between 1955 and 1959 a landfill operation commenced on the central and southern portions of the Consolidated Systems Property. The landfill was reportedly privately operated by Mr. Barney Jordan and utilized by the City of Columbia as a municipal landfill until the late 1960's or early 1970's.

- B. The history of ownership of the Consolidated Systems Property and the Consolidated Systems, Inc. (CSI) facility is set forth in Appendix D of this Contract and specified by parcel number. The Property that is the subject of this Contract is that portion of the Consolidated Systems, Inc. Property where the City of Columbia operated a solid waste landfill. As more specifically described in Appendix C, this VCC includes the property to the south of the Former Landfill Boundary as shown on the survey of the Consolidated Systems Property which is included at Appendix C. The remaining portion of the Consolidated Systems Site, is the subject of VCC 06-5671-RP between Consolidated Systems, Inc, Romer Building Partnership, Consolidated Properties, LLC, and Stage Two Properties Limited Partnership (hereinafter collectively, "Consolidated") and the Department.
- C. CSI has conducted manufacturing operations at the facility under the name Consolidated Systems, Inc. since the early 1970's. Approximately 52 acres of the Consolidated Systems Property is currently used for manufacturing, storage, vehicular access, parking and office space.
- D. The Consolidated Systems Property is currently developed with one 490,000 ft<sup>2</sup> metal main manufacturing and office building, two warehouses (23,000 ft<sup>2</sup> and 7,000 ft<sup>2</sup>), one 10,433 ft<sup>2</sup> metal maintenance building (for the maintenance of tractor trailers), one 955 ft<sup>2</sup> open metal tank building (housing a 5,000 gallon waste paint above ground storage tank and a 5,000 gallon solvent above ground storage tank that previously stored methyl ethyl ketone, and now currently stores acetone), a 47,000 ft<sup>2</sup> stucco office building, and a 1,600 ft<sup>2</sup> vinyl-sided dispatch building. In addition, historical maps and aerial photographs indicate the presence of a 4,500 ft<sup>2</sup> building that was previously located southwest of the current storage tank building. Maps in the CSI contingency plan identified this building as

“Hazardous Waste.” As part of the site reconnaissance for a Phase I Environmental Site Assessment performed for the Consolidated Systems Property by Hart & Hickman, PC in January 2005, interviews with current employees were conducted; these interviews noted that the “Hazardous Waste” label was incorrect – rather the building was used by a neighboring business for the storage of scaffolding and other construction equipment and materials. This building was torn down during an expansion of the facility in 1998.

- E. CSI operates two manufacturing divisions at the facility, Consolidated Metal Products (CMP) and the Metal Dek Group. Additionally, CSI runs a dispatch unit for Consolidated Cargo Carriers (CCC) at the facility.
- F. In 2002, CMP was in violation of the South Carolina Hazardous Waste Management Act due to housekeeping (improper labeling of drums). A civil penalty was imposed and subsequently paid, bringing CMP into compliance. There are currently no enforcement actions against CMP or Metal Dek Group.
- G. CMP conducts coal coating, tension leveling, blanking, slitting, and perforating operations for the construction, transportation, HVAC, appliance, and other original equipment manufacture markets. The operations at CMP involve mechanical and chemical processes and painting of metal substrate. Specifically, the processes include the receipt of rolled metal substrate, cutting and/or shaping the metal, pretreatment, embossing, and coating prior to shipment. Wastewaters associated with the metal cleaning line are processed in a wastewater treatment plant located in the main manufacturing building.
- H. CSI’s Metal Dek Group produces a full range of steel deck products that include bridge, roof, form, composite, and deep decks. Metal Dek operations are located east of a rail spur bisecting the main manufacturing building. Operations at Metal Dek include deck

production and are comprised primarily of various mechanical (metal bending and fabrication) operations. Formright 90 (a vanishing lubricant) is used in the processing at a rate of approximately 800 gallons per month. (Formright 90 is 100% Stoddard solvent.)

- I. The CSI facility has a Title V air permit (TV-1900-0040) due to the emission of volatile organic compounds (VOCs).
- J. The Hart and Hickman January 2005 Phase I noted that four petroleum and two solvent underground storage tanks (USTs) were previously utilized and subsequently abandoned at the Consolidated Systems Property. In addition, sumps were noted to be located at the following locations: Forklift Wash Area, an oil and water separator; Maintenance Building, drop inlet floor drain draining to the stormwater system located inside the building; Paint Room, a sump designed to collect discharges for subsequent disposal; Metal Coil Treatment Area, floor drains that collect overflow and overspray from the metal coil treatment area and subsequently empty into a 5,000 gallon underground holding tank.
- K. Property Solutions, Inc. also completed a Phase I of the Consolidated Systems Property in March 2006. The following recognized environmental concerns were noted in the Phase I; the former landfill operated by the City of Columbia, the active above ground storage tanks (ASTs) that currently store solvent on the landfill property, and warehouse #2 (where paint is currently stored.) The ASTs and warehouse #2 are part of the current and historic paint handling across the site that is identified in both Phase I reports.
- L. In anticipation of an upcoming property transaction, SCS Engineers submitted a delineation of the boundary of the former landfill to the Department in July 2006, based upon aerial photographs and previous geotechnical investigations. The Department reviewed the delineation report and agreed to delineate the Landfill Property as described in



the legal description included as Appendix C.

- M. CONSYS SC proposes to continue using the facility and the Landfill Property for commercial and industrial purposes, including leasing the facility and the Landfill Property to Consolidated Systems, Inc, or an affiliate thereof, for the purposes of conducting coil coating and other metal processing operations.

3. CONSYS SC is a state of Delaware corporation with its principal place of business located at 50 Rockefeller Plaza, 2<sup>nd</sup> Floor, New York, New York 20020. CONSYS SC is a Non-Responsible Party at the Site; it is not a parent, successor, or subsidiary of a Responsible Party at the Site; and it certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Landfill Property. CONSYS SC has had no previous involvement with the Site, including but not limited to any such activities that may have resulted in any Existing Contamination at the Site.

4. CONSYS SC agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Landfill Property that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be implemented upon written approval from the Department. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the analytical laboratory certified by the Department, and CONSYS SC's contact person for matters relating to this Contract. CONSYS SC will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify CONSYS SC in writing of any deficiencies in the Work Plan, and CONSYS SC shall respond in writing within thirty (30) days to the Department's comments. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

A. CONSYS SC shall perform a baseline characterization of all media on the Landfill Property that may have been impacted by past operations to include surface and subsurface soil (depth may depend on potential source, surface soil analytical results and/or presence of landfill debris), groundwater and indoor air, where applicable. Specifically, appropriate media at the following areas identified on Figure 1 entitled Proposed Sampling Locations accompanying correspondence from Marshtein and Marshall to Sabatini, dated March 31, 2006 shall be assessed:

- a. Warehouse I – Truss Building;
- b. Warehouse II – Paint Storage;
- c. Above Ground Storage Tanks to include the underground pipeline between the tanks and the Main Manufacturing Building;
- d. Consolidated Cargo Carriers – Office;
- e. Corporate Office Building;
- f. Guard House;
- g. The Landfill itself.

In addition, CONSYS SC shall assess any other potential source areas located on the Landfill Property.

B. CONSYS SC shall conduct assessment of surface soil (0-1 feet below ground surface) and subsurface soil (greater than two feet below ground surface and to first encounter with landfill debris) to characterize the nature and extent of any release of Hazardous Substances to soil on the Landfill Property. Soil samples shall be collected from potential contaminant sources to identify the presence of a release. Additional samples may be required to characterize the extent of a release. Soil sample locations shall be proposed in the

Work Plan based on site history and current conditions regarding potential contaminant sources. Analytical parameters shall be proposed in the Work Plan based on the former activities at or near each location and as specified below. In addition a minimum of 20% of the samples shall be analyzed for all parameters on the EPA Target Analyte List and Target Compound List (TAL/TCL). Soil samples shall be proposed at appropriate depths to detect contaminant releases in the immediate vicinity of potential contaminant sources including:

- a. Warehouse I – Truss Building;
- b. Warehouse II – Paint Storage;
- c. Above Ground Storage Tanks to include the underground pipeline between the tanks and the Main Manufacturing Building;

C. Soil quality results shall be compared to EPA Region IX Preliminary Remediation Goals (PRGs) for residential and industrial exposure and to EPA Region IX Soil Screening Levels for Contaminant Migration to Groundwater (SSLs) with a dilution/attenuation factor (DAF) of 20, which is appropriate for the Landfill Property. Alternatively, a site specific DAF may be determined based on site specific criteria in accordance with the EPA Soil Screening Guidance that can be accessed at, <http://www.epa.gov/superfund/resources/soil/index.htm>.

D. Based on the results of the initial assessment, additional assessment may be required to determine the extent of contamination and to identify any remedial actions that may be necessary to mitigate ongoing contaminant releases and for the intended use of the Landfill Property.

E. CONSYS SC shall assess groundwater quality and flow direction

across the Landfill Property to determine the lateral and vertical extent of any Hazardous Substances present in groundwater on the Landfill Property. Assessment shall include installation and sampling of appropriately placed monitoring wells across the Landfill Property. The Work Plan shall propose specific locations and construction of monitoring wells designed to detect any release of Hazardous Substances based on site history and present conditions regarding potential contaminant sources. Analytical parameters shall be proposed in the Work Plan based on the former activities at or near each potential source location. In addition, a minimum of 20% (*or more*) of the samples shall be analyzed for all parameters on the EPA Target Analyte List and Target Compound List (TAL/TCL). Groundwater quality shall be assessed immediately downgradient of each of the following identified potential contaminant source areas:

- a. Warehouse I – Truss Building;
- b. Warehouse II – Paint Storage;
- c. Above Ground Storage Tanks to include the underground pipeline between the tanks and the Main Manufacturing Building;
- d. The Landfill itself.

F. Groundwater quality results shall be compared to standards set forth in the South Carolina State Primary Drinking Water Regulations, R.61-58 or if not specified in R.61-58, to the EPA Region IX Preliminary Remediation Goals for Tap Water.

G. Based on the results of the assessment activities specified above, CONSYS SC shall agree to take, or cause to be taken, reasonable steps, approved by the Department, to stop continuing releases and to address identified contamination in a manner that is protective of

human health and the environment and consistent with the intended future use of the Landfill Property. Appropriate measures shall be taken to address the presence of Hazardous Substances (1) in excess of appropriate human-health and ecological risk-based standards via all potential routes of exposure, and (2) in excess of appropriate standards for contaminant migration to groundwater.

- H. Based on the results of groundwater assessment, implementation of a Department approved groundwater monitoring program may be required. If a groundwater monitoring program is not required and CONSYS and the Department agree that there are no further needs for any installed permanent groundwater monitoring wells, CONSYS SC shall abandon the monitoring wells in accordance with R.61-71 of the South Carolina Well Standards and Regulations, dated April 26, 2002.
- I. CONSYS SC shall measure landfill gas from the Landfill Property to evaluate impact to indoor air in the existing structures identified in 4.A. and outdoor air quality within the work yard of the Landfill Property. The landfill gas samples shall be collected and analyzed for site related constituents by appropriate methods capable of detecting landfill gas concentrations at screening levels indicative of a  $10^{-6}$  risk for shallow landfill gas samples (attenuation factor of 0.1) as identified in Table 2 of EPA OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance), <http://www.epa.gov/correctiveaction/eis/vapor.htm>.
- J. CONSYS SC shall assess methane in the subsurface and above

ground for the Landfill Property to evaluate potential impacts and in accordance with a plan approved by the Department. This plan shall account for weather and other factors affecting landfill gas quantity and quality. If determined necessary by the Department, develop and implement a Department approved methane gas management plan for the Landfill Property.

- K. Should the Department determine that landfill/soil gas concentrations exceed risk based screening levels identified based on EPA OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance), <http://www.epa.gov/correctiveaction/eis/vapor.htm>, CONSYS SC shall take reasonable steps to ensure acceptable indoor air quality for the intended use in accordance with a Department approved plan.

5. CONSYS SC shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. CONSYS SC agrees that the Health and Safety plan is submitted for informational purposes only to the Department and any liability that may result from implementation of the Health and Safety Plan shall rest solely with CONSYS SC.

6. CONSYS SC shall inform the Department at least five (5) working days in advance of all field activities pursuant to this Contract and shall allow the Department and its authorized representatives, if so desired, to take duplicates of any samples collected by CONSYS SC pursuant to this Contract.

7. CONSYS SC shall preserve all drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials

relating to the Site that may provide environmental information, evidence of a Potentially Responsible Party's involvement at the Site, or may lead to the discovery of other areas of contamination at the Site. Prior to destruction of any such items, CONSYS SC shall notify the Department of their location and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense.

8. Within thirty days of the execution date of this Contract and quarterly thereafter, CONSYS SC shall submit to the Department's project manager a written progress report that must include the following: (a) actions taken under this Contract during the previous reporting period; (b) actions scheduled to be taken in the next reporting period; (c) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (d) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

9. All correspondence which may be required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by (i) regular U.S. mail, (ii) certified or registered mail, postage prepaid, return receipt requested, (iii) or nationally recognized overnight delivery service company or by hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

All correspondence, work plans, and reports (including four (4) copies of all work plans and reports) should be submitted to:

The Department     Jo Cherie Overcash  
                              Bureau of Land and Waste Management  
                              2600 Bull Street  
                              Columbia, South Carolina 29201

CONSYS SC            Darren Postel

W.P. Carey & Co., LLC  
50 Rockefeller Plaza, 2<sup>nd</sup> Floor  
New York, New York 20020

10. The Department and CONSYS SC recognize that public participation is an important component of the Voluntary Cleanup Contract. Specific functions of the Department and CONSYS SC are as follows:

- A. The Department will seek public comment in accordance with S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005) as outlined below:
  - a. Upon signature of this Contract by CONSYS SC, the Department will provide notice for public participation by placing announcements describing the proposed Contract in newspaper(s) of general circulation within the affected community. A thirty-day period following the publication date of the announcement(s) will be provided for public comment and will precede the Department's scheduled date for execution of the Contract.
  - b. The Department may publicize the proposed Contract by any other means including, but not limited to, electronic mail, news releases, community flyers, and door-to-door canvassing. Such actions may be done solely at the Department's discretion.
  - c. A public informational meeting will be held if requested by twelve residents of South Carolina or an organization representing twelve or more residents of South Carolina. At the Department's discretion, public informational meetings may be held in the nearby communities for any other reason prior to the Department executing the contract. A public meeting may be requested at any time during the thirty-day comment period. In the event that a public meeting is deemed necessary, the Department will provide approximately two weeks advance notice of the meeting to the public and will extend the public



comment period at least through the end of the day following the public meeting. The Department will not execute the contract during any public comment period. In addition, the Department may, at its discretion, conduct public meetings to inform the community about the site at any time after the contract is executed until the certificate of completion is issued.

- B. CONSYS SC agrees to enhance the public knowledge of the site response activities by:
- a. Erecting a sign(s) at each entrance onto the reference property from any public road, thoroughfare, navigable waterway, or other location routinely accessible by the public. The sign(s) shall be erected not later than one day after publication of any public announcement about the site placed by the Department in any newspaper of general circulation in the community.
  - b. The sign will state "Voluntary Cleanup Project by CONSYS SC under Voluntary Cleanup Contract 06-5671-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the NRP contract and contact information for a representative of CONSYS SC and the Department. All required lettering on the sign must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the subject property.
  - c. Within 10 days after erecting the sign, CONSYS SC shall furnish to the Department photographs of the sign along with a site location drawing showing the sign location(s). Photograph(s) of the sign(s) shall be taken from no closer than the edge of the publicly-accessible road, waterway, etc. and should include an appropriately sized scale reference so that Department may determine the size of the sign and effectiveness of the lettering. CONSYS SC agrees to revise the sign if

the Department determines the sign is not legible.

- d. CONSYS SC must maintain the sign(s) in legible conditions and visible locations throughout the duration of the contract period until a certificate of completion is issued on the site.
- e. In the event that any sign must be removed to accommodate building or grading activities, CONSYS SC shall replace the sign within two days. If the sign cannot be restored to the original location, CONSYS SC may relocate it to another location meeting the conditions specified above.

All costs incurred by the Department for public participation [e.g., public notice(s), building and equipment rental(s) for public meetings, etc.] will be paid by CONSYS SC.

11. The terms and conditions of this Contract apply to and shall inure to the benefit of each signatory and its Non-Responsible Party lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries but only to the extent that such parties have never been a Responsible Party at the Site. The Department shall be notified in writing upon transfer of ownership of the property.

12. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation not a signatory of this Contract or a signatory's NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries.

13. Nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties other than CONSYS SC and its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries to perform or pay for response actions at the Landfill Property. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its

authority under State and Federal law.

14. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Landfill Property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). CONSYS SC and subsequent owners of the Landfill Property shall ensure that a copy of this Contract is provided to any lessee successor or other transferee of the Landfill Property.

15. As provided for by S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (D) (2002), CONSYS SC shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract. Oversight costs include but are not limited to the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and public participation. Payments will be due within thirty (30) days of receipt of the Department's invoice. Invoices shall be submitted to:

Darren Postel  
W.P. Carey & Co., LLC  
50 Rockefeller Plaza, 2<sup>nd</sup> Floor  
New York, New York 20020

16. The Department and CONSYS SC agree that the following are entitled to protection from contribution claims for the Landfill Property as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005): CONSYS SC, its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. A thirty (30) day comment period for contribution protection commences upon notice of this Contract to Responsible Parties at the Site as identified by the Department through a reasonable search effort.

17. The Department and CONSYS SC agree that the following are entitled to protection from third-party claims for equitable relief or damages relating to "Existing Contamination" on, beneath, or emanating from the Landfill Property, as provided by S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005): CONSYS SC, its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. This limitation on liability does not apply to any contamination, releases, and consequences caused by CONSYS SC or its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. Furthermore, this limitation of liability is effective on the date this contract is executed by the Department, but will be automatically withdrawn if this contract is lawfully terminated by either party.

18. If Hazardous Substances in excess of residential standards exist at the Consolidated Systems Property after CONSYS SC has completed the actions required under this Contract and Consolidated has completed the actions required by its Responsible Party Contract with the Department, CONSYS SC shall enter and file a restrictive covenant. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of CONSYS SC and witnessed, signed, and sealed by a notary public. CONSYS SC shall file this restrictive covenant with the Register of Mesne Conveyance or Deeds in Richland County. The signed covenant shall be incorporated into this contract as an Appendix. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require CONSYS SC or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. CONSYS SC or subsequent owners of the Property shall file an annual report with the Department by May 31<sup>st</sup> of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Landfill Property. The report may be submitted in a manner prescribed by the Department.

19. Two (2) years after the execution date of this Contract, CONSYS SC or subsequent owner of the Property shall provide the Department with the following information concerning the new operation at the Property: the number of jobs created; the amount of increase to the tax base; the amount of soil removed or remediated, if necessary; cost of all environmental work; total investment in the site; and any other information that demonstrates that the activities performed pursuant to this Contract have been beneficial to the State, the community, and the Department.

20. Upon successful completion of the terms of this Contract as referenced in Paragraphs 5, 18, and 19 above, CONSYS SC shall submit to the Department a written notice of completion. As part of this notice, the company shall report the costs of all environmental work and the total amount invested in the site for property acquisition and capital improvements. Once the Department determines satisfactory completion of the Contract terms, the Department, as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005), will give CONSYS SC a Certificate of Completion that provides a covenant not to sue CONSYS SC, its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries for Existing Contamination, except for releases and consequences caused by CONSYS SC or its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. In consideration of the protections from the Department, CONSYS SC and its lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

21. CONSYS SC specifically denies any responsibility for response costs or damages resulting from Existing Contamination and does not, by signing this Contract, waive any rights that it may have to assert any claims in law or equity against any other person, company, or entity with respect to the Site. However, CONSYS SC and its lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries are responsible and liable for any and all contamination, releases, and consequences they cause or contribute to the Site. Should environmental contamination neither previously-identified nor identified during the performance of response actions required under this Contract be discovered at the Landfill Property after the execution date of the Certificate of Completion, the burden is on CONSYS SC or its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries to demonstrate to the Department's satisfaction that the contamination, releases, and consequences were not caused by CONSYS SC or its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries.

22. CONSYS SC or subsequent owners of the Landfill Property and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should CONSYS SC or subsequent owners of the Landfill Property elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard created by CONSYS SC shall be stabilized and/or mitigated such that the Landfill Property does not pose a hazard to human health or the environment that did not exist prior to any initial response action addressing contamination identified in this Contract.

23. The Department may terminate this Contract only for cause, which may include but is not limited to the following: (a) events or circumstances at the Landfill Property that are inconsistent with the terms and conditions of this Contract; (b) failure to complete the terms of this Contract or the Work Plan; (c) failure to submit timely payment for oversight costs as defined in Paragraph 16 above, (d) additional contamination or releases or consequences

caused by CONSYS SC or its lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries; (e) providing the Department with false or incomplete information or knowing failure to disclose material information; or (f) change in CONSYS SC's its lenders', parents', subsidiaries', and successors', including new purchasers', lessees', heirs', and beneficiaries' business activities on the Landfill Property or use of the Landfill Property that are inconsistent with the terms and conditions of this Contract.

24. Upon termination of the Contract, the covenant not to sue, contribution protection, and liability protection will be null and void. However, if the lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries provide false or incomplete information or if its business activities change such that they are inconsistent with the terms and conditions of this Contract, then the covenant not to sue, contribution protection, and liability protection shall become null and void only as to the lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries involved in the action giving rise to the termination without affecting the protections provided by this Contract to the previous Non-Responsible Parties and other NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries.

25. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
CONTROL**

BY: \_\_\_\_\_  
Robert W. King, Jr., P.E.

DATE: \_\_\_\_\_  
Columbia, South Carolina

Deputy Commissioner  
Environmental Quality Control

\_\_\_\_\_  
Patrick T. (Pat) Walker, Chief  
Bureau of Land and Waste Management

DATE: \_\_\_\_\_

\_\_\_\_\_  
Office of General Counsel

DATE: \_\_\_\_\_

**CONSYS (SC) QRS 16-66, INC.**

\_\_\_\_\_  
Signature

DATE: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title



# **APPENDIX A**

# **APPENDIX B**

## **APPENDIX C**

## **APPENDIX D**

